

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PATRICIA A. ROSE</b>	)	
Claimant	)	
	)	
VS.	)	Docket No. 1,021,466
	)	
<b>JC PENNEY</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimant requested review of the July 21, 2006 Award by Administrative Law Judge Robert H. Foerschler. The Board heard oral argument on November 7, 2006.

**APPEARANCES**

Michael R. Lawless of Lenexa, Kansas, appeared for the claimant. Zachary Kolich of Merriam, Kansas, appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award. The parties stipulated that claimant died September 30, 2005, due to a cause unrelated to her work-related injury.

**ISSUES**

The primary issue raised for Board determination is whether a worker's death from independent and unrelated causes terminates the respondent's obligation to pay weekly permanent partial disability benefits for the period preceding the worker's death if the workers compensation proceedings were commenced but had not concluded with an award before the worker's death.<sup>1</sup>

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<sup>1</sup> See *Walden v. B. A. Barnes Electric, Inc.*, No. 220,421, 2006 WL 3298917 (Kan. WCAB Oct. 13, 2006); *Kraus v. Boeing Co.*, No. 239,731, 2002 WL 31828616 (Kan. WCAB Nov. 25, 2002); *Thomas v. General Motors*, Nos. 104,746 & 114,219, 1995 WL 781186 (Kan. WCAB Dec. 15, 1995).

Respondent contends the claimant's death prior to entry of an Award relieves respondent of any obligation to pay any benefits. Claimant argues, on the other hand, that respondent is responsible for payment of benefits from the date of accident through the date of death.

The Administrative Law Judge (ALJ) limited respondent's obligation in this matter to payment of decedent's temporary total disability benefits and medical expenses which had already been paid as a result of her compensable shoulder injury. But the ALJ further concluded decedent's death abrogated the respondent's obligation to pay any permanent partial disability benefits.

The parties agreed that if claimant is entitled to permanent partial disability benefits from the date of accident to the date of her death the case should be remanded to the ALJ for determination of the nature and extent of permanent partial disability benefits.

However, at oral argument the Board inquired whether the claimant's estate was represented in this matter and it was determined that it was not. It was further agreed that there had not been a factual determination whether claimant left dependents. Accordingly, it was agreed that the case should be remanded to address these matters.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

K.S.A. 44-510e(b) provides:

If an employee has received an injury for which compensation is being paid, and the employee's death is caused by other and independent causes, **any payment of compensation already due the employee at the time of death and then unpaid shall be paid to the employee's dependents directly or to the employee's legal representatives** if the employee left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such employee shall cease and be abrogated by the employee's death. (Emphasis Added)

Any unpaid or accrued compensation due at the time of claimant's death is to be paid directly to claimant's dependents, if any, and if none then to claimant's legal representative. Although there were statements of counsel regarding possible beneficiaries, it has not been established whether claimant left dependents. Furthermore, there is no legal representative of claimant's estate in this case. Counsel's contract of employment with claimant and his appearance as attorney for claimant does not constitute an attorney/client relationship with claimant's estate.

Opening an estate would allow for the appointment of a legal representative and provide a mechanism for determining claimant's heirs at law. This procedure would also assist with ascertaining whether claimant was survived by dependents. As the real party in interest was not substituted for the deceased claimant, the ALJ was without jurisdiction to enter an Award. Accordingly, the ALJ's Award is reversed and remanded to allow for a substitution of parties.

**AWARD**

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated July 21, 2006, is reversed and the matter remanded to the ALJ for further proceedings.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael R. Lawless, Attorney for Claimant  
Zachary Kolich, Attorney for Respondent  
Robert H. Foerschler, Administrative Law Judge